

240 Ct  
w/ P.O.

FILED  
HARRISBURG, PA

APR - 8 2013

MARY E. D'AMOREA, CLERK  
Per 

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA  
and ERIK J. EBERZ, Revenue  
Officer, Internal Revenue  
Service,

Plaintiffs,

-VS-

TIMOTHY J. WASHBURN,

Defendant.

Civil Action 1:12-cv-1908

Judge John E. Jones III

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DEFENDANT'S OBJECTIONS AND MOTION TO SET ASIDE  
ORDER OF MARCH 19, 2013

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COMES NOW Defendant to raise his objections to the Court's Order as promulgated in writing on March 19, 2013, and to move that said Order be set aside or vacated by this Court, for which he states as follows:

1. The subject-matter jurisdiction of this Court extends only to the requirements of the enforced summons, not to the production of documents never required by the summons. The demand for, or even agreement to provide, Washburn's wife's credit union statements are outside the scope of this Court's jurisdiction over summons enforcement or contempt proceedings.

2. Compliance with the Court's order is impossible; Washburn is not in possession of and exercises no control over the credit union account of his wife or her bank statements; he has no personal knowledge of her deposits, and he cannot be held in contempt for failing to supply any information concerning them.

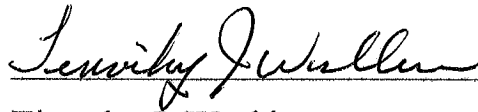
3. The order impermissibly compels the preparation and creation of documents that do not currently exist, which is outside of the scope of summons authority under 26 U.S.C. § 7602.

4. The government has illegally attempted to obtain Washburn's wife's bank records in defiance of 12 U.S.C. § 3402 and 26 U.S.C. § 7609(a).

5. Washburn is proceeding *pro se*, and as such, cannot be found in contempt without being afforded the right to counsel.

WHEREFORE, for the reasons set forth in the attached memorandum in support of this motion, and incorporated herewith by reference thereto, Defendant prays that this Court set aside its Order of March 19, 2013, and find that Defendant has now fully complied with this Court's Order of January 18, 2013.

Respectfully submitted this 5<sup>th</sup> day of April, 2013,

A handwritten signature in cursive script, reading "Timothy J. Washburn", is written over a horizontal line.

Timothy J. Washburn, *pro se*  
6458 Pamadeva Road  
Hanover, PA 17331  
717-637-7809

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

Pursuant to Local Rule 7.1, the undersigned certifies that he contacted Plaintiff's counsel, D. Brian Simpson, on April 5, 2013 to obtain his concurrence or non-concurrence to Defendant's Objections and Motion to Set Aside Order. Mr. Simpson told Mr. Washburn that his intention was to file notice with the court on April 8, 2013, that Mr. Washburn was in compliance; it was possible that the motion to set aside the court's order may be unnecessary; he was aware that Mr. Washburn could not produce what he did not have control over and had nevertheless requested his wife's bank records per his agreement. Thus, Defendant is uncertain at this time whether Plaintiff's counsel concurs or not with this Motion.

Respectfully submitted this 5<sup>th</sup> day of April, 2013.

  
Timothy J. Washburn

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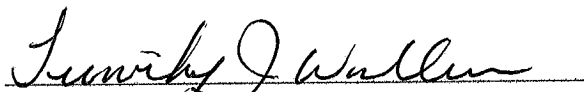
Civil Action 1:12-cv-1908

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of DEFENDANT'S OBJECTIONS AND MOTION TO SET ASIDE ORDER OF MARCH 19, 2013, for Case No. 1:12-cv-1908, along with a copy of the MEMORANDUM IN SUPPORT OF DEFENDANT'S OBJECTIONS AND MOTION TO SET ASIDE ORDER, has been served, this 5<sup>th</sup> day of April, 2013, by U.S. mail, postage prepaid, upon the following:

D. Brian Simpson  
U.S. Attorney's Office  
228 Walnut Street, Suite 220  
Harrisburg, PA 17108

  
Timothy J. Washburn